In the High Court of Judicature at Madras

Dated: 19.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Petition No.46967 of 2006
and M.P.No.1 of 2006

E.Raju ..Petitioner

..vs..

1. The Tahsildar,
   Mambalam-Guindy Taluk,
   Taluk Office,
   Bharathidasan Colony,
   Ashok Nagar,
   Chennai-600 083.

2. The District Collector,
   Chennai District,
   Chennai.

3. The Commissioner,
   Corporation of Chennai,
   Ripon Buildings,
   Chennai-600 003. ..Respondents

Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, directing the respondents to forbear from demolishing the Kanniamman Temple and from cutting and removing the neem tree being maintained by the petitioner adjacent to his property in premises bearing Door No.1, Ayyavoo Street, Jafferkhanpet, Ashok Nagar, Chennai-83 except under due process of law, namely, by taking recourse to the provisions of the Tamilnadu Land Encroachment Act, if necessary.

For Petitioner : Mr.S.Sadasharam

For Respondents : Mr.K.Elango, Spl.G.P., for R1 and R2
Mr.V.Bharathidasan for Corporation

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ORDER

(Order of the Court was made by P.SATHASIVAM, J.,)

The petitioner, by name, E.Raju, resident of No.52, Pachaiappan Street, Jaffarkhanpet, Ashok Nagar, Chennai-83, has filed the above writ petition, to issue a Writ of Mandamus, directing the respondents, namely, (1)Tahsildar, Mambalam-Guindy Taluk, (2) District Collector, Chennai and (3) Commissioner, Corporation of Chennai, to forbear them from demolishing the Kanniamman Temple and from cutting and removing the neem tree being maintained by the petitioner adjacent to his property in premises bearing Door No.1, Ayyavoo Street, Jaffarkhanpet, Ashok Nagar, Chennai-83 except under due process of law, namely, by taking recourse to the provisions of the Tamil Nadu Land Encroachment Act, if necessary.

2. According to the petitioner, he is running a tea stall and a bunk stall in the premises bearing Door No.1, Ayyavoo street, Jaffarkhanpet, Ashok Nagar and the land of the said premises was allotted by the Tamil Nadu Slum Clearance Board in favour of his brother Kuppusamy. The petitioner, his brother and other family members were established a temple in the corner of their premises bearing Door No.1, Ayyavoo Street, Jaffarkhanpet and also a neem tree was developed and maintained near the said property. It is his case that the neem tree and the temple are being maintained and protected by their ancestors for the last more than 60 years. Neither the temple nor the neem tree is an obstruction, causing inconvenience to the public and so far, no untoward incident had occurred near the place in question. The respondents have not issued any notice nor initiated proceedings under Tamil Nadu Land Encroachment Act, 1905.

3. When the above writ petition came up for admission, we issued notice to the respondents. At the time of hearing, learned counsel appearing for third respondent-the Commissioner, Corporation of Chennai, has brought to our notice that a decision had already been taken for cut and removal of the neem tree and also removal of brick wall, which has been constructed around the tree since both the tree and the wall surrounded by it are located in the middle of the road, which are hindrance to free flow of traffic. The file produced also shows that the tree may be cut and removed from the place in question in order to allow the free flow of traffic.

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4. Since the learned counsel appearing for the petitioner has disputed the claim of the third respondent and also argued that the neem tree and the surrounded wall (including the temple) are not hindrance to traffic or public, we appointed Mr.Pitty Parthasarathy as Advocate Commissioner to inspect the property situated at Door No.1, Ayyavoo Street, Jaffarkhanpet and directed him to note down the exact location of neem tree, surrounded wall, temple if any, and other physical features. In the same order, we also directed the Advocate Commissioner to ascertain whether the tree and surrounded wall are hindrance to free flow of traffic as well as the general public.

5. Pursuant to our direction, the Advocate Commissioner inspected the spot on 16.12.2006 at 3.30 PM and the petitioner, his counsel, Town Surveyor-I, Mambalam-Guindy Taluk, one Mr.N.Arasu, Assistant Executive Engineer Unit-25, and R.Subash, Assistant Engineer, Division 131, were present on the spot at the relevant time. The Commissioner had taken the measurements with the assistance of Town Surveyor and one Civil Engineer. Apart from the report, he also filed a sketch, which was prepared in scale. The following information of the Advocate Commissioner are relevant.

> "The sketch annexed to this report was prepared in scale. In this sketch the road was marked in black colour, temple was shown in red colour, neem tree was shown in green colour, steps was shown in blue colour. I submit that the entire width of the road is 42'.5". The temple was constructed 5'0" x 5'.3" and the neem tree was also stands within the temple premises itself. The temple was put up in cement mortar situated at the distance of 14'.5" from the edge of the western side of the road and 23'.0" from the eastern edge of the road. The neem tree situates at the point at east to west at 23'.0" the dia of the tree is approximately 10. After taking measurements I prepared a rough sketch and obtained signatures from the parties concerned. Subsequently I started collecting opinions and suggestions from the public and nearby residents to know whether the tree and temple are causing hindrance to anyone"

6. Apart from the above information regarding the actual location of the neem tree, surrounded wall and temple, he also obtained statements from the residents and public numbering 19. Though several persons residing nearby area have stated that the existence of neem tree is not a hindrance to the general public and free flow of traffic, one C.Venkatesan, resident of No.67,

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Pachaiappan Street, who is a Councilor, Division No.131, has stated that he is residing in the said address for the past 37 years and the presence of the tree and the surrounding wall are hindrance to the traffic as well as general public. Likewise, one V.Ravichandran, who is the President of T.Nagar Area, Law Protection Committee, has stated that the tree is a hindrance to the traffic as well as general public. In the same way, other two residents have also expressed that the presence of tree is hindrance to the public as well as traffic.

7. Apart from the above statements, we verified the sketch prepared by the Advocate Commissioner. As mentioned above, the width of the road is 42'.5". According to the Commissioner, the temple was constructed 5'.0" x 5'.3" and the neem tree stands within the temple premises. The temple was put up in cement mortar situated at the distance of 14'.5" from the edge of the western side of the road and 23'.0" from the eastern edge of the road. According to the Commissioner, the neem tree situates at the point east to west at 23'.0". Mere look at the sketch clearly shows that the tree and the surrounded wall are situated approximately in the middle of the road. It is also relevant to note that at the place in question, the tree and the surrounded wall have occupied nearly more than 40% of the road width. As rightly pointed out by the learned counsel for the respondents, it is near a junction of 4 road and for the vehicles coming from north, it would be difficult for them to take a right turn i.e., towards Ayyavoo 4th Street. The report and the sketch further show that the petitioner has put up three steps to enter his shops only on the road margin. The steps have been shown in blue colour, which amply show that those steps were put up only at the edge of the road.

8. In the light of the information furnished by the Advocate Commissioner, who measured and noted the physical features with the assistance of Suveryor and the Civil Engineer and also recorded the statements of various persons including elected representatives of the area in question in the presence of the petitioner and his counsel, we are satisfied that the neem tree and the surrounded wall with temple are approximately in the middle of the road and undoubtedly, the same have to be removed for free flow of traffic for the general public.

9. In addition to the report of the Commissioner and the sketch, we also verified the photographs produced before us. Apart from the present report and sketch, as stated earlier, the officials of the Corporation, on inspection, taking note of the interest of the general public, have decided to cut and remove the tree and also to remove the wall and temple put up therein. We agree with the decision taken by the Commissioner, Corporation of Chennai.

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10. In those circumstances, the relief claimed by the petitioner cannot be granted by this Court. On the other hand, we are of the firm view that the tree and the surrounded wall including the temple, if any, have to be removed in the interest of general public and free flow of traffic. We also make it clear that if the steps (shaded in blue colour in the sketch of the Advocate Commissioner) put up by the petitioner are obstruction to road users, the Corporation is free to take appropriate steps for removal of the same. The Commissioner and their officers are free to take necessary assistance from the concerned police and if any such request is made, the Commissioner of Police or the Officers concerned, are directed to provide necessary assistance.

11. The writ petition is dismissed with a direction to the third respondent to implement their decision in PDC.No.P2/1138/06 dated 08.09.2006 in the interest of the general public as well as for free flow of traffic. No costs. We appreciate the efforts taken by the Advocate Commissioner and as agreed earlier, the petitioner as well as the third respondent are directed to pay a sum of Rs.5,000/- each towards remuneration of the Commissioner, within a period of two weeks from the date of receipt of a copy of this order. Consequently, M.P.no.1 of 2006 is closed.

gl

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Tahsildar,
   Mambalam-Guindy Taluk,
   Taluk Office,
   Bharathidasan Colony,
   Ashok Nagar,
   Chennai-600 083.

2. The District Collector,
   Chennai District,
   Chennai.

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3. The Commissioner,
   Corporation of Chennai,
   Ripon Buildings,
   Chennai-600 003.

4. The Pittty Parthasarathy, Advocate Commissioner
145, Law Chambers, High Court Buildings, Chennai

+ one cc to the Government Pleader sr no. 63699
+ one cc to M/s. S. Sadashram, Advocate sr no. 63529
+ one cc to Mr. V. Bharathidasan, Advocate sr no. 63767

bv(Co)
nm(22.12.2006)

Order in Writ Petition No.46967 of 2006

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